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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1854

ROBERT DUVAL ROGERS,
Petitioner,

vs.

MRS. MINNIE CORNELIA ROGERS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

BRIEF FOR RESPONDENT IN OPPOSITION

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July 12, 1974

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OPINION BELOW

The opinion of The Supreme Court of Mississippi in *Rogers* v. *Rogers, et al.* (App. A of Petition), is reported at 290 So. 2d 631. A petition for rehearing was denied on 18 March, 1974.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this court pursuant to the provisions of 28 U.S.C. 1257 (3). Respondent concedes that a final judgment was entered by the highest court of Mississippi. Respondent denies, however, that a substantial federal question is presented.

QUESTION PRESENTED

Whether, in view of the affirmative constitutional duty imposed by the Full Faith and Credit Clause and related statutory provisions, a Mississippi court may review the jurisdictional basis of a decree entered by an Alabama court and, upon a factual finding of conscious fraud, refuse to acknowledge the import of the Alabama decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Article IV, Section 1 provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Title 28, U.S.C. §1738 provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certifi-

cate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT

This is a domestic relations case. After a review of the complete record, the Supreme Court of Mississippi concurred without reservation in the chancellor's express factual determination that the petitioner, in order to obtain a divorce from an aging wife who was suffering a rapid mental deterioration, perpetrated a conscious fraud on the Circuit Court of Baldwin County, Alabama. The key factual determination centered on the court's finding that the respondent was wholly without sufficient mental capacity to execute a valid waiver of process and entry of appearance. The opinion of the Supreme Court of Mississippi (App. A of Petition), reported at 290 So. 2d 631, adequately details the factual background.

After obtaining a divorce decree, the petitioner left his wife at the home of their invalid son, returned to Alabama, and married another woman. The Mississippi court, after a full presentation of the facts, refused to recognize the decree procured by fraud and ordered petitioner to pay separate maintenance to the respondent, who was subsequently confined to the Mississippi State (Mental) Hospital. Petitioner contends the Mississippi court was required to accept the import of the Alabama decree on its face.

ARGUMENT

Petitioner's argument is focused on his contention that the Supreme Court of Mississippi either failed to apply or incorrectly applied controlling decisions of this court. Petitioner is manifestly incorrect. The principal case relied on by the petitioner, *Haddock* v. *Haddock*, 201 U. S. 562 (1906), was expressly overruled in *Williams* v. *North Carolina*, 317 U. S. 287 (1942) (Williams I).

This is a domestic relations case. The record presents facts which are uniquely narrow. The decision below affects only the members of an isolated and unfortunate family. Clearly, there is no element of significant public interest at stake.

Moreover, no substantial issue of federal constitutional or statutory construction is posed which would warrant review on certiorari. The decision below correctly applies principles previously approved by this court.

I. The Decision Below Is Clearly Correct.

This case is controlled by the principles announced in *Williams* v. *North Carolina*, 325 U. S. 226 (1945) (Williams II) and subsequent cases involving recognition of foreign divorce decrees. The efficacy of the Alabama divorce in Mississippi is the decisive question.

The Full Faith and Credit Clause requires a Mississippi court to accord prima facie validity to the Alabama decree. *Esenwein* v. *Pennsylvania*, 325 U. S. 279 (1945). A judgment which, on its face, appears regular and valid is entitled to a presumption that the court which entered the decree had acquired jurisdiction over the parties and subject matter. *Cook* v. *Cook*, 342 U. S. 126 (1951). The

Mississippi court satisfied the reciprocal duty of respect owed to the Alabama adjudication. The Mississippi court refused to recognize the decree only after a full presentation of the underlying jurisdictional facts.

The existence vel non of facts sufficient to confer jurisdiction is a matter to be resolved by judicial determination. If a specific finding of jurisdiction, amply supported in the record, has been made by the adjudicating court, then the matter is not subject to relitigation by collateral attack in the courts of a sister state. *Sherrer* v. *Sherrer*, 334 U. S. 343 (1947). In this case, however, the Alabama Court made no inquiry into the facts underlying the purported waiver of process and entry of appearance. Therefore, in the face of an appropriate challenge to the decree, the Mississippi court was required to examine the jurisdictional facts. *Williams* v. *North Carolina*, 325 U. S. 226 (1945) (Williams II). If the Alabama court did not have jurisdiction, or if apparent jurisdiction was obtained through fraud, then the court had no power to extinguish any rights the respondent had. *Vanderbilt* v. *Vanderbilt*, 354 U. S. 416 (1957); *Estin* v. *Estin*, 334 U. S. 541 (1948).

After trying the issue, the chancellor determined that the divorce decree "was procured upon a Waiver of Process which was fraudulently obtained on July 20, 1971 when the said Minnie B. Rogers . . . was mentally incompetent and that said action constitutes a fraud upon the said Mrs. Minnie B. Rogers and the Circuit Court of Baldwin County, Alabama and that said Decree is not entitled to recognition under the full faith and credit clause of the Constitution of the United States in the Courts in the State of Mississippi." (App. C-2 of Petition). The Supreme Court of Mississippi concurred in the chancellor's finding of fact.

The determination of this issue of jurisdictional fact was within the province of the Mississippi court. *Williams II, supra.* The issue was fairly determined by appropriate procedure. The findings are amply supported by the evidence, and this court will not retry the facts. *Rice* v. *Rice,* 336 U. S. 674 (1949).

II. There Is No Important Question of Federal Law.

The principles of constitutional construction applicable to this litigation have been well-settled for almost thirty years. This case certainly presents no novel or significant issue which would require the attention and deliberation of this tribunal.

The precise issue in this case was resolved in *Williams* v. *North Carolina,* 325 U. S. 226 (1945) (Williams II). The state court, therefore, did not decide a previously unresolved federal question of substance. See, Supreme Court Rule 19. The state court had ample authority to inquire into the jurisdictional basis of the decree. The decision of the state court, therefore, is in complete accord with the applicable decisions of this court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied

Respectfully submitted,

BERNARD W. N. CHILL
Counsel for Respondent

July 12, 1974

CERTIFICATE OF SERVICE

I, Bernard W. N. Chill, Counsel for Respondent, hereby certify that a true copy of the foregoing Brief for Respondent in Opposition has been mailed, postage prepaid, to Honorable L. Percy Quinn, Counsel for Petitioner, Post Office Box 1085, Laurel, Mississippi 39440.

This the 12th day of July, 1974.

BERNARD W. N. CHILL